> may exercise their right to object to a court ruling and may vigorously advocate their positions before the appropriate tribunal, both the dignity of the court and the orderly functioning of the judicial system necessitate prompt adherence to the writ of the court.

Hern Iron Works, 881 F.2d at 725-26 (footnotes omitted).

In arguing that the contempt fines imposed by Judge Zilly's September 26, 2003 Order were improper, and that this Court should intervene to address that issue, petitioners argue that *Hern Iron Works* is inconsistent with the case law of other circuits. Petition, at 14-15. They assert that only the Ninth Circuit applies the collateral bar rule where the underlying order was not appealable. In other words, petitioners argue that other circuits' law would permit them to challenge the underlying May 15, 2003 Order as part of their appeal of the September 26, 2003 Order. Petitioners are incorrect.

All of the cases relied upon by petitioners in attacking the Ninth Circuit's application of the collateral bar rule are distinguishable, because, unlike here, they involve criminal contempt. Petitioners rely primarily on *Walker v. City of Birmingham*, 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967). *Walker*, however, is inapposite. First, it involved criminal contempt, rather than civil contempt; violation of the underlying order would result, by statute, in jail time. *Walker*, 388 U.S. at 312. Further, *Walker* involved the violation of an injunction. 388 U.S. at 313. Here, the Ninth Circuit determined that the underlying May 15, 2003 Order was not an injunction:

> 1. The following orders are non-final and beyond our jurisdiction to review:

> a. The May 15, 2003 order releasing the *lis pendens*. *See Special Invs., Inc. v. Aero Air, Inc.*, 360 F.3d 989, 993 (9th Cir. 2004). The order is not appealable as an injunction. *See Shee Atika v. Sealaska Corp.*, 39 F.3d 247, 248 (9th Cir. 1994) (describing jurisdiction over orders where the language of 28 U.S.C. § 1292(a)(1) is satisfied).

Pet. App. A2.

Similarly, *United States v. Ryan*, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971), does not support petitioners' arguments in this case. Rather, *Ryan* merely holds that, in the specific setting of a motion to quash a subpoena duces tecum, an order denying such a motion to quash is not immediately appealable. 402 U.S. at 532. Because the present petition does not concern the denial of a motion to quash a subpoena duces tecum, *Ryan* has no relevance.

Next, petitioners cite to *In re Novak*, 932 F.2d 1397 (11th Cir. 1991). As with the other cases relied upon by petitioners, *Novak* involved a "conviction for criminal contempt", whereas Judge Zilly's September 26, 2003 Order was a finding of civil contempt. See *Novak*, 932 F.2d at 1398. In addition, *Novak* involved the unique factual setting of a non-party's obligation to move to quash an order to personally appear in court. 932 F.2d at 1402. *Novak* does not permit a party to collaterally "attack" a prior court order it violated. *In re Steeley*, 243 B.R. 421, 437 (N.D. Ala. 1999).

Next, petitioners rely on *Matter of Providence Journal Co.*, 820 F.2d 1342 (1st Cir. 1986). *Providence Journal* involved the clearly distinguishable context of a facially unconstitutional order restraining a newspaper from

publishing certain information. Again, *Providence Journal* concerned criminal contempt, rather than civil. 820 F.2d at 1345. The First Circuit found that none of the bases offered by the trial court justified the restraint. As a result, the First Circuit invoked the "transparently invalid" exception to the collateral bar doctrine, found the restraint unconstitutional, and vacated the order of criminal contempt. 820 F.2d at 1347-49. Here, petitioners' conduct resulting in the finding of contempt involved filing prohibited statutory notices, not "pure speech"; thus, *Providence Journal* does not support petitioners.

Like *Providence Journal*, *State v. Alston*, 256 Kan. 571, 887 P.2d 681 (1994), concerned a newspaper's decision to publish information despite a court order not to publish the information. In addition, *Alston* involved criminal contempt, rather than civil contempt. See 256 Kan. at 588.

Similarly, *United States v. Dickinson*, 465 F.2d 496 (5th Cir. 1972), arose in the context of a trial court's order that a newspaper not publish certain information. The newspaper violated the order, and a finding of criminal contempt resulted. 465 F.2d at 509. Although the Fifth Circuit found the underlying order constitutionally invalid, it remanded to the trial court to determine if the criminal contempt conviction could still stand. 465 F.2d at 514.

Like the other cases relied upon by petitioners, *Wurpts v. Iowa Dist. Ct. Sioux City*, 687 N.W.2d 286 (Iowa App. 2004), involved criminal contempt rather than civil contempt. Moreover, the *Wurpts* Court did not apply the collateral bar rule in a way that is relevant to the instant matter. Rather, *Wurpts* reversed the contemnor's contempt conviction because the contempt conviction had been based

solely on an unconstitutional statute, 687 N.W.2d at 290-91, which is not at issue here.

United States v. Cutler, 58 F.3d 825 (2nd Cir. 1995) involved a finding of criminal contempt. In *Cutler*, the trial court in a criminal case ordered the parties and their attorneys not to discuss the case with the press. 58 F.3d at 828. In defiance of the trial court's order, an attorney for one of the parties repeatedly spoke to the press regarding the case and the trial court held the attorney in criminal contempt. *Id.* The Second Circuit affirmed, finding that plaintiff could not collaterally attack the underlying order in his appeal of the contempt conviction, because none of the exceptions to the collateral bar rule applied. 58 F.3d at 831-32.

Finally, petitioners cite to *Pina v. Espinoza*, 130 N.M. 661, 29 P.3d 1062 (N.M. App. 2001), a case in which a plaintiff defied a discovery order permitting blanket access to her medical history. The *Pina* court expressly declined to apply the collateral bar rule, because there had been no finding of criminal contempt. 130 N.M. at 669. As a result, *Pina* is inapplicable here.

Respondents do not believe that this Court has jurisdiction to consider petitioners' efforts to challenge Judge Zilly's September 26, 2003 Order, or Judge Zilly's May 15, 2003 Order as part of their challenge to the September 26 Order. Because the May 15, 2003 Order was not appealable, and the September 26, 2003 Order imposed only civil contempt, petitioners' challenges to those orders must await an appeal from the final judgment which will be entered in this consolidated federal action on some future date. Moreover, even if the Court believes it has jurisdiction to consider the petitioners' attack on *Hern Iron Works*,

and the application of *Hern Iron Works* to the facts of this case, this Court should nevertheless decline to grant the petition, because a $2,500 sanction for filing a *lis pendens*, in disregard of the District Court's order does not warrant this Court's involvement. Petitioners have an adequate remedy as part of their anticipated appeal from final judgment in this case.

C. The Ninth Circuit's Decision on Appealability of the *Lis Pendens* Order Follows *Carson v. American Brands, Inc.* and Does Not Constitute a Split Among the Circuits.

Whether or not a split exists among the circuits on the appealability of an order barring a litigant from seeking relief in state court, it is not implicated in the instant matter. Instead, the Ninth Circuit relied on *Carson v. American Brands, Inc.*, 450 U.S. 79, 89-90 (1981) to conclude that the order barring the filing of a *lis pendens* in state court is not appealable as a preliminary injunction, "because it granted no indefinite or permanent substantive relief." Pet. App. A3-4. This Court's holding in *Carson v. American Brands, Inc.* is controlling:

> For an interlocutory order to be immediately appealable under § 1292(a)(1), however, a litigant must show more than that the order has the practical effect of refusing an injunction. Because § 1292(a)(1) was intended to carve out only a limited exception to the final-judgment rule, we have construed the statute narrowly to ensure that appeal as of right under § 1292(a)(1) will be available only in circumstances where an appeal will further the statutory purpose of "permit[ting] litigants to effectually challenge interlocutory orders of serious, perhaps irreparable,

> consequence." *Baltimore Contractors, Inc. v. Bodinger, supra*, [384 U.S. 176, 75 S.Ct. 249, 99 L.Ed. 233 (1955)], at 181, 75 S.Ct., at 252. Unless a litigant can show that an interlocutory order of the district court might have a "serious, perhaps irreparable, consequence," and that the order can be "effectually challenged" only by immediate appeal, the general congressional policy against piecemeal review will preclude interlocutory appeal.

450 U.S. at 84-85, 101 S.Ct. 996-97. Petitioners have not attempted to meet this standard and for that reason their petition should be denied.

Petitioners' extensive analysis of the particular application of this rule in different circuits is inapposite. Specifically, all of the decisions relied upon by petitioners involve a stay or injunction against proceeding in another federal court or in state court. The District Court's temporary and narrowly drawn limitation here does not affect the petitioners' right to proceed in state court but, rather, prohibits them from refiling a statutory *lis pendens* notice in the county auditor's office since Judge Zilly previously addressed their right to do so, found against them and entered an order prohibiting such a filing. Pet. App. C1-4.

The cases relied upon by petitioners from other Circuits do not provide any basis to challenge either Judge Zilly's order or the Ninth Circuit's approval of that order. In *FDIC v. Santiago Plaza*, 598 F.2d 634 (1st Cir. 1979), the Court of Appeals accepted review only because the federal district court ordered the appellant not to proceed in state court and, as such, that the order was clearly appealable under 28 U.S.C. § 1292(a)(1). *Id.* at 635-36.

In *National Equipment Rental, Ltd. v. A.L. Fowler*, 287 F.2d 43 (2nd Cir. 1961), the Court of Appeals accepted

interlocutory review of a case in which two federal courts were attempting to enjoin each other from proceeding in parallel cases that in all material respects were identical. *Id.* at 44-45. In *H.B.E. Leasing Corporation v. Frank*, 48 F.3d 623 (2nd Cir. 1995), an interlocutory appeal was allowed by the Second Circuit from an order granting an injunction requiring defendant to remove mortgage liens on property and provide for the immediate delivery and sale of the mortgaged property, because this injunction provided some or all of the substantive relief sought in plaintiff's complaint. *Id.* at 632-33.

In *Maryland v. Atlantic Aviation Corp.*, 361 F.2d 873 (3rd Cir. 1966), a federal court in New Jersey issued an injunction directing plaintiffs to abstain from all further proceedings in their identical suit in federal court in New York. An interlocutory appeal was granted because leaving the injunction intact would render the parties' proceedings in New York moot. *Id.* at 874.

In *Phillips v. Charles Schreiner Bank*, 894 F.2d 127 (5th Cir. 1990), plaintiff sued his bank and the bank filed suit in Texas state court to foreclose on some of plaintiff's property. Plaintiff obtained an order prohibiting the bank from taking further action in state or federal court to foreclose on any of the properties involved in the suit. The Court of Appeals concluded that this interlocutory injunction was appealable because the District Court was prohibiting proceedings in another court. *Id.* at 130.

In *Guy v. Citizens Fidelity Bank and Trust*, 429 F.2d 828 (6th Cir. 1970), the Court of Appeals accepted review of an order which restrained defendants from prosecuting any action in any court against Citizens Fidelity Bank. *Id.* at 831. Similarly, in *Amsouth Bank v. Dale*, 386 F.3d 763

(6th Cir. 2004), the Court of Appeals distinguished the Third Circuit decision of *Hershey Foods Corp. v. Hershey Creamery Company*, 945 F.2d 1272 (3rd Cir. 1991) and followed the rule that "an order that prohibits a party from pursuing litigation in another forum unquestionably is an injunction for purposes of § 1292(a)(1) . . . " *Id.* at 773.

In *Asset Allocation and Management Company v. Western Employers Insurance Company*, 892 F.2d 566 (7th Cir. 1990), the Court held that interlocutory review of an injunction was available where Asset Allocation and Management Company first filed suit in the Northern District of Illinois and Western then filed suit in California. The Illinois Federal District Court enjoined Western from proceeding with its California suit. The Seventh Circuit found this to be properly reviewable under 28 U.S.C. § 1292(a)(1). *Id.* at 568-69.

In *MAI Basic Four, Inc. v. Basis, Inc.*, 962 F.2d 978 (10 Cir. 1992), plaintiff MAI brought suit in Federal District Court against defendant Basis, et al. Basis moved for a preliminary injunction restraining MAI from filing any suits against third parties relating to the dispute between MAI and Basis. The injunction was granted and MAI appealed. The Tenth Circuit found that where a preliminary injunction has been issued that affects the right to file other lawsuits, an interlocutory appeal is appropriate. *Id.* at 982-83. Similarly, in *Katz v. Lear Sieglar, Inc.*, 909 F.2d 1459 (D.C. Cir. 1990), an interlocutory appeal was allowed because a federal court had issued an injunction against continuing suit in another forum. *Id.* at 1461.

In all of these suits, the interlocutory appeal was allowed under 28 U.S.C. § 1292(a) for the reason that a federal court had issued an injunction prohibiting parties

from proceeding to litigate related disputes in federal or state court. These holdings provide no support for petitioners where, as here, the only issue presented is that petitioners utilized the Washington statutory remedy of filing a *lis pendens* notice in the county recorder's office and were directed not to do so because it was without merit. The District Court's order prohibiting them from doing so without further leave of the court is not comparable to a prohibition on proceeding in other courts.

Petitioners cite *Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 294, n. 9 (2005) for the proposition that parallel state and federal litigation is part of the American legal system. Petition at 20. Petitioners cannot, of course, complain that Judge Zilly has in any way prohibited them from proceeding in their litigation in state court. Instead, their grievance is only that he determined a statutory notice remedy available under state law was improper and should not be utilized. Petitioners' attempt to magnify this narrow ruling into a global prohibition on pursuing their claims in state court is unsupportable.

D. The *Rooker-Feldman* Doctrine and the *Younger* Abstention Doctrine Do Not Apply to the Appeal Relating to These Respondents.

Petitioners raise arguments relating to the *Rooker-Feldman* Doctrine and *Younger* Abstention Doctrine, decisions which the Ninth Circuit applied in the petitioners' case against the judges of the trial and appellate courts of the State of Washington. Pet. App. at A4. As it has nothing to do with these respondents, no response is offered.

IV. CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

DATED this 12th day of April, 2006.

Respectfully submitted,

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No. 05-991

IN THE
Supreme Court of the United States

Viveca Sanai, Cyrus Sanai, and Fredric Sanai,

Petitioners,

v.

Sassan Sanai, et. al.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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No. 05-991
In The
Supreme Court of the United States

Viveca Sanai, et al.
Petitioners,
v.
Sassan Sanai, et. al

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Respondents Sassan Sanai, Internal Medicine & Cardiology Inc., Mary McCullough, William Sullivan, and Marsh, Mundorf, Pratt, Sullivan & McKenzie (collectively, the "Sassan Parties") have addressed two of the four issues presented to this Court. The state court judicial officials sued by Petitioners (including Philip Maxeiner, Sassan Sanai's accountant who was appointed as a judicial referee by the other judical defendants) have not filed an opposition and have not filed any notice of non-opposition. Petitioners will address new authority that is relevant to the claims against the state judicial officers before addressing the points raised by the Sassan Parties.

I. There is a Three-Way Circuit Circuit Split as to Whether the *Rooker-Feldman* Doctrine Applies to Ongoing State Court Proceedings.

Petitioners' third question presented a split between the First and Ninth Circuits' application of this Court's recent opinion on the *Rooker-Feldman* doctrine, *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). In *Exxon Mobil*, this Court held that the *Rooker-Feldman* doctrine does not apply to state court actions which are ongoing, but the circuit courts cannot agree when a state proceeding has ended for purposes of *Rooker-Feldman*. What was a two-way split is now a three-way split. In *Guttman v. Khalsa*, 03-2244 (10th Cir. 2006), the Tenth Circuit held, after this Court granted a petition of certiorari and remand based on *Exxon Mobil*, that the *Rooker-Feldman* doctrine does not bar a federal suit which would affect an ongoing state action, whether in the trial or appellate stage. *See Guttman v. Khalsa*, 126 S. Ct. 321 (2005). The Eighth Circuit took the same position in *Dornheim v. Sholes*, 430 F.3d 919, 923-924 (8th Cir. 2005). These holdings conflict with the Ninth Circuit's holding, invoked in this case, that *Rooker-Feldman* bars federal suits that may affect ongoing state court proceedings if the state high court has resolved, or declined to address, a single constitutional issue on an interlocutory basis. *Mothershed v. Justices of the Supreme Court*, 410 F.3d 602 (9th Cir. 2005). The First Circuit took a third tack, ruling that *Rooker-Feldman* applies to ongoing state court proceedings only if all federal issues have been resolved at the highest possible state court level and thus opening up the possibility of certiorari review by this Court.

Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico, 410 F.3d 17 (1st Cir. 2005).

The First, Eight, Ninth and Tenth Circuits have now adopted every possible logical permutation of this oft-recurring question. This Court should grant review to resolve this ever-widening circuit split.

II. The Proposed Alternative Questions Presented are Misleading and Incomplete

The Sassan Parties propose two questions presented which are misleading and incomplete.

The first question proffered by the Sassan Parties is whether the Ninth Circuit is "in substantial conformity with the other federal circuits in determining that the collateral bar doctrine does not allow review of the contempt order where that order was for civil rather than criminal contempt." Sassan Parties Brief at 1. In fact, the Ninth Circuit's published authority holds the opposite: "The collateral bar rule applies only to criminal contempt charges. The invalidity of the underlying order is always a defense to a civil contempt charge." *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 726, fn. 11 (9th Cir. 1989), *citing United States v. United Mine Workers*, 330 U.S. 258 (1947). Indeed, every Circuit follows this Court's decision in *United Mine Workers,* so there is not a single example of any circuit court applying the collateral bar doctrine to a civil contempt order.

The Sassan Parties also contend that the second issue before this Court is whether the May 15, 2003 orders are appealable or not. That is not correct.

This second issue before this Court is the appealability of the orders issued by the trial court on September 26, 2003 which (1) barred the Petitioners from filing additional lis pendens and (2) canceled a lis pendens filed in respect of a state court action. The September 26, 2003 orders were a modification of the May 15, 2003 orders absolutely barring any "interference" in the judicial activities assigned to Sassan's accountant, Philip Maxeiner, and canceling a lis pendens filed in respect of the federal court action.

28 U.S.C. §1292(a)(1) provides that the Court of Appeal has jurisdiction over orders which modify prior injunctions and other orders deemed to be injunctions under 28 U.S.C. §1292(a)(1). Similarly, orders which modify final judgments or orders are themselves appealable as final orders. While the orders subject to one of the appeals at issue in this petition are the September 26, 2003 orders, those orders would be appealable if the May 15, 2003 order canceling a lis pendens and barring any "interference" in the sale by judicial referee Philip Maxeiner of two properties in the divorce between Petitioner Viveca and Respondent Sassan were also appealable; but it is not the case that if the May 15, 2003 orders were unappealable, that the September 26, 2003 orders must be unappealable as the latter were inextricably bound to a criminal contempt conviction.

III. The Trial Court's Order to Pay $2,500 to it was a Criminal Contempt Order.

In 1994, this Court directly addressed the question of what constitutes a civil versus a criminal

contempt, and the constitutional protections required for each kind of proceeding. This Court wrote that:

> This dichotomy between coercive and punitive imprisonment has been extended to the fine context. A contempt fine accordingly is considered civil and remedial if it either "coerce[s] the defendant into compliance with the court's order, [or] . . . compensate[s] the complainant for losses sustained." *United States v. Mine Workers,* 330 U.S. 258, 303-304 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. *See Penfield Co. of Cal. v. SEC,* 330 U.S. 585 (1947). Thus, a "flat, unconditional fine" totaling even as little as $50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. Id., at 588.

International Union, United Mine Workers of America, v. Bagwell, 512 U.S. 821, 829 (1993)

In this case the trial court imposed a "flat, unconditional fine" totaling $2,500, payable to the trial court, and there was no subsequent opportunity to reduce or avoid the fine through compliance. The Ninth Circuit followed this Court's analysis on this issue and found that the fine was a criminal contempt penalty. The Sassan Parties' brief quotes a different section of *Bagwell,* at page 833 (mis-cited in

the brief as page 823), to argue that the fine was civil. However, they are confused. The issue under discussion in that portion of the opinion concerns what "further procedural protections are afforded for contempts occurring out of court, where the considerations justifying expedited procedures do not pertain." *Bagwell,* 512 U.S. at 833. The question of whether the contempt should have been adjudicated through a full criminal trial is not before this Court.

Moreover, as noted by the Sassan Parties, a civil contempt order is not directly appealable. *See* Sassan Parties Brief at 4. Accordingly, if the Ninth Circuit had found that the September 26, 2003 order to pay a $2,500 fine was a civil contempt sanction, it would have declined to review the September 26, 2003 order in any respect. The Ninth Circuit's memorandum order lists, in Section 1 of the order, all of the trial court orders which it found were not appealable. *See* Cert Pet. App. A2-A3. The September 26, 2003 order to pay a $2,500 fine to the trial court is absent from the list of non-reviewable orders. Instead, the Ninth Circuit applied its long standing precedent concerning the collateral bar rule, *Hern*, to hold that Petitioners could not challenge the merits of the May 15, 2003 "cease and desist" order in its appeal of the criminal contempt order. "The collateral bar rule applies only to criminal contempt charges. The invalidity of the underlying order is always a defense to a civil contempt charge." *Hern,* 881 F.2d at 726, fn. 11, *citing United Mine Workers,* 330 U.S. at 295. This text is set forth in footnote 11 of *Hern*; this footnote was conveniently omitted by the Sassan Parties in their misleading quotation from this opinion. *See*

Sassan Parties Brief at 5-6 (omitting footnote 11). The application by the Ninth Circuit of the collateral bar rule to the order under review necessarily means that the Ninth Circuit found the order to be a criminal contempt order. If the Ninth Circuit had found it to be a civil contempt order, then under *Hern* and this Court's decision in *United Mine Workers* (cited in *Hern*) the collateral bar rule could not apply.

Sassan's argument for denying review of the first question rests almost entirely on the misconception that the collateral bar rule applies to a civil contempt order. *See* Sassan Parties Brief at 6. This contention is meritless, given footnote 11 of *Hern*. The remainder of the arguments suggest fake distinctions between the order at issue here and the orders at issue in published precedent. In *Walker v. City of Birmingham,* 388 U.S. 307, 319 (1967), this Court expressly conditioned the application of the collateral bar rule in criminal contempt cases to the availability of "an expedited process of appellate review" of the order. This holding was reiterated in *United States v. Ryan*, 402 U.S. 530, 532 n.4 (1971), where this Court wrote that "*Walker v. Birmingham*, 388 U.S. 307 (1967), is not to the contrary. Our holding that the claims there sought to be asserted were not open on review of petitioners' contempt convictions was based upon the availability of review of those claims at an earlier stage." The Sassan Parties' response to this obvious conflict between *Walker* and *Ryan*, on the one hand, and *Hern* and this case on the other, is to argue that because the criminal contempt orders arose from violation of a different kind of order than at issue here, that the

prerequisite of prior appellate review is not applicable. This happens to be the analysis in *Hern*. However, there is zero authority to support this contention, other than *Hern* itself. Every other appellate court to consider the matter, including this Court, has held that an opportunity for prior appellate review is an absolute precondition to application of the collateral bar doctrine, no matter what the reason for its imposition. Accordingly, this Court should resolve the conflict between the Ninth Circuit's view on this issue, and the precedent of this Court and every other court to have addressed the matter.

IV. Under the Majority View, Orders Barring Exercise of a State Court Remedy or Canceling a Lis Pendens are Appealable.

The Sassan Parties do not dispute, let alone address, the inter-circuit conflict between the view assumed by the Third Circuit and now the Ninth Circuit concerning the appealability of orders which restrict or bar a party from seeking a remedy in state court. Instead, they argue that even under the majority view, the May 15, 2003 orders and the September 26, 2003 order modifying the May 15, 2003 orders, which canceled a lis pendens and barred Petitioners from filing a lis pendens in state court or taking any other action to interfere with Philip Maxeiner's exercise of his judicial duties, would not be directly appealable.

This contention is directly contradicted by the Eighth Circuit's decision in *S.B. McLaughlin & Co. v. Tudor Oaks Condominium Project*, 877 F.2d 707, 709 (8th Cir. 1989), where the Eighth Circuit ruled